

**IN THE HIGH COURT OF UTTARANCHAL
AT NAINTAL**

First Appeal From Order No. 411 of 2001
(Old No.641 of 1985)

Sangram Singh S/o Sri Dharama Singh
R/o Village Ratgaon
Police Station Garur
District Chamoli owner
Of Bus No. USY 3180

.....Appellant

Vs

1. Smt. Anita Devi Widow of Lae Sri Chandra
R/o Village Karakot Patti Gagwarsyun
District Garhwal
 2. Oriental General & Fire Insurance Co. Ltd.
New Delhi through its
General Manager
 3. Garhwal Motor Owners Union Ltd.
Kotdwara through its
General Manager
- ... Opposite Parties /
Respondents.

Sri S.N. Babulkar, learned senior Advocate assisted by Sri Yogesh Pacholia, learned counsel for the appellant
Sri Deepak Rawat, learned counsel for the opposite party No. 2

Hon'ble B.C. Kandpal, J.

This Appeal from Order, under Section 110-D of the Motor Vehicles Act, has been preferred by the appellant – Sri Sangram Singh (owner) against the judgment and award dated 03.06.1985, in M.A.C.P. No. 2 of 1984, passed by M.A.C.T./District Judge, Pauri Garhwal, by which the Tribunal has awarded an amount of Rs. 30,000/- as compensation along with an interest @ 6% per annum to the claimants- Smt. Anita Devi.

2. Heard Sri S.N. Babulkar, learned senior Advocate assisted by Sri Yogesh Pacholia, learned counsel for the appellant, Sri Deepak Rawat, learned counsel for the opposite party No. 2 and perused the record.

3. Learned counsel for the opposite party No. 2 has confined his argument only to the point that the liability of the Insurance Company at the time of the accident in view of the provisions of Section 95(1)(b) (ii) read with Sections 95(2)(b) (ii) and 95 (2) of the Motor Vehicles Act, was upto an extent of Rs. 5,000/- each passengers and Rs. 75,000/- in all where the vehicle was registered to carry more than 30 and not more than 60 passengers. The argument of the learned counsel for the appellant is that passenger bus is involved in this case, which was carrying the passengers for hire or reward at the time of the accident, therefore, the provisions contained in Section 95(1) (b)(ii) read with Section 95 (2)(b)(ii) of the M.V. Act become applicable in this case.

4. The record reveals that the motor bus No. USY 3180 on 08.07.1983 while on way from Kotdwar to Pauri Garhwal, fell down from the road towards its right side. The bus was full of passengers and out of the total passenger, 7 or 8 passengers died at the spot while the others suffered injuries. The Tribunal, after the assessment of the evidence, awarded an amount of Rs. 30,000/- to the claimant in this case as compensation, who is the wife of the deceased Sri Chandra Maurya, who died in the accident.

5. The Hon'ble Apex Court in the case of **Road Transport Company Vs. Bhan Singh and another**, reported in **II (1998) ACC 190 (SC)** has held that the liability of the Insurance Company will have to be determined under Section 95(2) (b)(ii) of the M.V. Act.

6. In the instant case, it is not in dispute that at the relevant time Section 95(2)(b)(ii) MV Act limited the liability of the Insurance Company to the extent of Rs. 5,000/- for each passengers and Rs. 75,000/- in all, where the vehicle was

registered to carry more than 30 but not more than 60 passengers.

7. The vehicle involved in the accident in the present case was a passenger bus, in which the passengers were being carried for hire or reward. Therefore, in view of the Hon'ble Apex Court's decision (Supra), the liability of the Insurance Company would be only upto an extent of Rs. 5,000/- per passenger.

8. It has been submitted by Sri S.N. Babulkar, learned Senior Advocate appearing on behalf of the appellant - Sangram Singh who is the owner of the offending bus in question that he has already deposited an amount of Rs. 65,665/- in the year 1997-98 in pursuance to the recovery notice issued against him on 18.10.1997. In case, if it is so, then the amount for which the owner of the vehicle is held to be liable to pay as compensation to the claimants, shall be adjusted towards the total payment to be made by him.

9. The appeal is thus allowed. The impugned judgment and award dated 03.04.1985, in MACP No. 2 of 1984, passed by M.A.C.T/District Judge, Pauri Garhwal, is modified upto the extent that the Oriental Insurance Company/appellant is liable to pay the compensation for Rs. 5,000/- only.

10. It is made clear that the liability of the owner of the offending bus is not affected in any manner to pay the rest of the amount of the impugned award.

(B.C. Kandpal, J.)

08.09.2006
ASWAL